written law and, in effect, purported to legislate for itself (see *Magor & St. Mellons RDC* v. *Newport Corporation*[35] and *London Transport Executive* v. *Betts*[36]). The constitutional function performed by the courts of justice is to interpret and apply the written law laid down in Acts of Parliament. It is for Parliament, not for the judiciary, to decide any changes that should be made to the law as stated in the Acts, and if so, what are the precise limits.

For the above reasons I would allow the appeal and set aside the Mareva injunction granted by the High Court.

That would dispose of the appeal but learned counsel for the appellants' alternative submission was that if the High Court in Malaya had jurisdiction to grant a Mareva injunction it was contended that such an interlocutory order could not and ought not to be made against a person or company who is not and/or has not been made a party to the action. To understand this submission I need only state very briefly the pertinent facts. It seems to me that the plaintiffs in this appeal took out a writ against the defendant, Lorrain Esme Osman, claiming, *inter alia*, a number of declarations in the alternative and lastly the sum of $27,652,853.06. The plaintiffs applied and was granted a Mareva injunction directed not only against the defendant but also his servants or agents or nominees or otherwise howsoever. The nominees named in the Mareva injunction are five in number. Later, on the application of the plaintiffs the Mareva injunction was varied to (a) include the names of 94 companies and/or his nominees companies and (b) an Anton Piller order addressed to Aspatra Sdn. Bhd., one of the nominee companies. Twenty nine out of the 94 companies applied to the court for (i) leave to intervene and (ii) to discharge the Mareva injunction and the Anton Piller order insofar as it applies or affects them. The learned judge refused the application to dissolve the Mareva injunction and the Anton Piller order in respect of the 22 companies only and they are the appellants/interveners named in this appeal. These 22 companies are not made co-defendants in the suit filed by the plaintiffs.

References were made to *Galaxia Maritime SA* v. *Mineralimportexport*,[37] *Z. Ltd.* v. *A*[38] and *SCF Finance Co.* v. *Masri & Anor.*[8] It seems to me that all these decisions of the Court of Appeal might have been based on section 37(1) and (3) of the Supreme Court Act 1981 and not under section 45(1) of the Judicature Act 1925 which appeared to have been relied on by the Federal Court in *Zainal Abidin's* case, and since I have not heard full submissions whether different considerations would apply, I would not make any decision on the point raised preferring to reserve it to be thoroughly argued at some future date when the same point should come up for determination.

Similarly, I express no opinion whether or not the corporate veil should be pierced when dealing with an application for a Mareva injunction, either in the interest of justice or to prevent an injustice. I refrain from expressing which of the two tests ought to be applied.

In my opinion, the plaintiffs in this appeal are not without remedy and there is no lacuna in the law because section 19 of the Debtors Act 1957 expressly provides for application to be made after the filing of the writ to attach the property of the defendant, before judgment, to answer the just demand of the plaintiffs until the trial of the action and satisfaction of any judgment that may be made against him even though the plaintiffs do not assert any proprietary claim over the property of the defendant. This procedure appears to find some support in the dictum of Lord Diplock in *Damodaran* v. *Choe Kuan Him*[32] at page 270.

Appeal dismissed.

Solicitors: *Fernandez & Co.; Skrine & Co.*

DREAMLAND CORPORATION (M) SDN. BHD. v. CHOONG CHIN SOOI & ANOR.

[S.C. (Wan Suleiman, Mohamed Azmi & Syed Agil Barakbah S.C.JJ.) March 3 & October 17, 1987]

[K.L. – Supreme Court Civil Appeal No. 414 of 1986]

Labour Law – Dismissal of worker – Immediate dismissal without inquiry – Good ground for dismissal – Matter referred to Industrial Court – Dismissal upheld but made to take effect from the last date of hearing in Industrial Court – Reference to High Court – Application dismissed – Appeal to Supreme Court – Jurisdiction to award relief to worker whose dismissal is upheld – Industrial Relations Act 1967, ss. 20 & 30.

The appellant company had dismissed the first respondent by sending him a letter dismissing him with immediate effect. The first respondent contended that the dismissal was without just cause and contrary to the princi-

ples of natural justice. There was a reference to the Industrial Court which held that that the appellant company was justified in dismissing the first respondent as he had committed misconduct. However, the court held that as no inquiry had been held, the effective date of the dismissal should be the last date of the inquiry, so that the first respondent was entitled to back wages. The award was referred to the High Court on questions of law, namely, (1) does the Industrial Court have jurisdiction to award compensation to a workman whose dismissal has been upheld by the court? and (2) does it have jurisdiction to amend the date of dismissal of the workman so that the workman is deemed to be in employment until the date of the award and thereby becomes entitled to back wages? The application to the High Court was dismissed and the appellant company appealed.

Held, allowing the appeal: (1) the workman in this case was lawfully dismissed as was held by the Industrial Court;

(2) neither the Industrial Court nor the High Court was correct in amending the date of dismissal and in awarding compensation as a consequence of such amended date, as both matters were outside their jurisdiction in an inquiry under section 20(3) of the Industrial Relations Act 1967.

Cases referred to:

(1) *Lee Wah Bank Ltd.* v. *National Union of Bank Employees* [1981] 1 M.L.J. 169.
(2) *Dr. A. Dutt* v. *Assunta Hospital* [1981] 1 M.L.J. 304, 313.
(3) *K.C. Mathews* v. *Kumpulan Guthrie Sdn. Bhd.* [1981] 2 M.L J. 320.
(4) *British Labour Pump Co. Ltd.* v. *Byrne (E.A.T.)* [1979] I.R.L.R. 94; I.C.R. 347.
(5) *Sillifant* v. *Powell Duffryn Timber Ltd (E.A.T.)* [1983] I.R.L.R. 91.
(6) *Earl* v. *Slater and Wheeler (Airlyne) Ltd.* [1972] I.C.R. 508.
(7) *Workmen of the Motipur Sugar Factory Private Limited* v. *The Motipur Sugar Factory Private Limited* A.I.R. 1965 S.C. 1803.
(8) *Premier Tyres Ltd.* v. *Workmen* 1973 Lab. I.C. 1131, 1132.
(9) *Lim Tow Peng & Anor.* v. *Singapore Bus Services Ltd.* [1976] 1 M.L.J. 254.
(10) *In re Amin* [1983] 3 W.L.R. 258, 263.
(11) *Hotel Equatorial (M) Sdn. Bhd.* v. *National Union of Hotel, Bar and Restaurant Workers & Anor.* [1984] 1 M.L.J. 363, 371.
(12) *General Ceramics Manufacturers Sdn. Bhd.* v. *Non-Metallic Products Manufacturing Employees Union* [1984] I.L.R. 451.
(13) *B.S.S. Kanda* v. *Government of Federation of Malaya* [1962] M.L.J. 169.
(14) *University of Ceylon* v. *Fernando* [1960] 1 All E.R. 631.
(15) *Dunlop Industries Employees Union* v. *Dunlop Malaysian Industries Bhd. & Anor.* [1987] 2 M.L.J. 81.
(16) *Sasa Musa Sugar Works (Pvt) Ltd.* v. *Shobrati Khan* A.I.R. 1959 S.C. 923.
(17) *Workmen of Firestone Tyre & Rubber Co. of India Pte. Ltd.* v. *The Management* A.I.R. 1973 S.C. 1227.
(18) *Calvin* v. *Carr & Ors.* [1979] 2 All E.R. 440.

A SUPREME COURT.

C.V. Das (*R. Rajasingam* with him) for the appellant.

B. Lobo for the respondents.

Cur. Adv. Vult.

B

Wan Suleiman S.C.J. (delivering the judgment of the court): The appellant company had dismissed the respondent, its project manager, with effect from February 23, 1984. The company did so by sending Choong a letter dismissing him with immediate effect.

C

Choong contends that the dismissal was without just cause or excuse and/or alternatively was unfair labour practice. Further or in the alternative, Choong contends that the dismissal was contrary to the principles of natural justice and therefore void, and therefore prayed for reinstatement to his former position in the company without loss in salary, monetary or otherwise.

D

The reference to the Industrial Court was made under section 20(3) of the Industrial Relations Act 1967.

E

Before the Industrial Court, the case for the company was that on various occasions it had pointed out to Choong his casual and indifferent attitude towards his responsibilities. It also alleged that he had not shown any improvement despite the admonition and in addition instigated or provoked dissatisfaction among fellow workers. This, it said, had caused it loss and therefore the dismissal was justified in law.

F

G

The Industrial Court heard witnesses both for the appellant and for Encik Choong and, after due deliberation, the following award was handed down by the Chairman (who sat alone):

H

"1. I find that there is evidence that the Claimant had talked about the low salaries and low increment to the staff in the Company, and this to my mind brings about a bad effect among the staff concerned, so I uphold the dismissal of the Claimant by the Company.

2. The Claimant had committed a misconduct and before such dismissal took effect the Company did not hold any inquiry at all. Though I uphold the order of dismissal of the Claimant the effective date of such dismissal takes effect on the last date of the hearing; therefore the Claimant is entitled to backwages from the date of dismissal February 23, 1984 till April 28, 1986, *i.e.* 26 months and 4 days at the rate of $2,400.00 a month ... $62,720/–

I

3. The Company is to pay this sum within one (1) month from the date of this Award after tax clearance."

This award was referred under section 33A of the Industrial Relations Act to the High Court on a question of law, the question or issue of law being: (1) does the Industrial Court have jurisdiction to award compensation to a workman whose dismissal has been upheld by the court? and (2) does it have jurisdiction to amend the date of dismissal of the workman so that the workman is deemed to be in employment until the date of the award and thereby become entitled to backwages?

Regretably, there was no written grounds of judgment. At the end of the hearing, the learned judge recorded a cryptic note which we set out hereunder:

"Section 20(1) Where a workman ... considers that he has been dismissed without just cause or excuse by his employer ... these words include not only the reason for the dismissal but also the manner of the dismissal more particularly as in this case rules of natural justice not observed in that the enquiry was not held. What the Industrial Court Award means is that after its own inquiry there were reasons for the dismissal but as the inquiry was not held, the dismissal was without just cause or excuse.

Hence the order for payment of back wages because until then it could not be said that the workman had been dismissed without just cause or excuse.

The Secondary order would be no reinstatement – hence no award of compensation in lieu of reinstatement. Choice of words by Industrial Court may be unfortunate but basis of decision is correct in law.

Application dismissed with costs."

We have perforce to make do with this.

Mr. Das for the appellant submits that there are two issues of jurisdiction.

It is common ground that (1) the worker's dismissal was justified and (2) that there was no domestic order or inquiry.

He contends that there is no jurisdiction under section 30 of the Industrial Relations Act for the Industrial Court to award relief to a worker whose dismissal it has upheld, and that therefore the award is without jurisdiction.

He went on to say that under section 20(1) of the Act, it is the workman who represented that he had been dismissed without just cause or excuse. Referring next to section 30(1) and (6), his contention is that unless there is a finding for the workman on the question of liability *i.e.* that he had been dismissed without just cause or excuse, there is no jurisdiction in the Industrial Court to offer relief. This condition precedent had not been met.

In *Lee Wah Bank Limited* v. *National Union of Bank Employees*[1], the Industrial Court, after hearing an application by a bank employee, made an award on the following terms:

"The court now awards that the dismissal of the claimant by the bank do stand. However, in view of his long service with the bank and the fact that the complaints in question are not of a criminal nature, the court directs that any benefits due under the relevant collective agreements or agreement up till date of dismissal shall be paid over to him."

Hashim Yeop A. Sani J. (as he then was) considered the power of the Industrial Court, the part relevant to this appeal being set forth hereunder:

"How wide then are the powers of the Industrial Court under section 30(6)? According to section 30(6) of the Act the Industrial Court in making an award should not be bound to restrict itself to the specific relief asked for nor to the demands of the parties. The Industrial Court in making the award may include in the award any matter which it thinks necessary or expedient for the purpose of settling the dispute or the reference. That is the gist in clause (6) of section 30 of the Act. In my view the apparent broadness of the language used here does not go beyond what is already conferred on any person (or body) by section 40(1) of the Interpretation Act 1967. ... These are powers which are necessarily implied and nothing more. Since the Industrial Court is a creature of the Industrial Relations Act 1967, its powers must be discovered only from the four corners."

Our attention was also drawn to what the Federal Court said in *Dr. A. Dutt* v. *Assunta Hospital*[2] (in response to contention on behalf of the Hospital) that the extension of a section 30 award to a reference under section 20(3) is an excess of jurisdiction save in the limited award of wages for the interim period until reinstatement and has no effect where the Industrial Court does not order reinstatement; in other words, all or nothing.

It should be noted that section 30(6) uses the term "relief," not compensation or reinstatement. Counsel added that there is considerable uncertainty in the Industrial Court as to the consequences to an employer who dismisses a worker without a domestic hearing. He cites from a passage headed "The domestic inquiry: consequences of employer's failure adequately to inquire" – in "The Industrial Disputes in Malaysia 2nd edition by C.P. Mills" commencing from page 121 which discusses conflicting decisions of the Industrial Courts, which not being courts of record, are relevant, for the purpose of this appeal, only to show the uncertainty on this issue in those courts.

We were also referred to the Federal Court decision in *K.C. Mathews* v. *Kumpulan Guthrie Sdn. Bhd.*[3] where, in dismissing the appeal, the Federal Court held that no inquiry need be called in the circumstances of the case because the appellant knew all the time how dissatisfied his employer was with him and the inquiry would have served no useful purpose.

Inquiry seems to be a rule of practice in Britain. In *British Labour Pump Co. Ltd.* v. *Byrne (E.A.T.)*[4] the Employment Appeal Tribunal held:

"Where an employer has not followed a proper procedure, the right approach is for the Industrial Tribunal to ask two questions. First, have the employers shown on the balance of probabilities that they would have taken the same course had they held an inquiry, and had they received the same information which that inquiry would have produced? Secondly, have the employers shown that in the light of the information which they would have had had they gone through the proper procedure, they would have been behaving reasonably in still deciding to dismiss?".

See also *Sillifant* v. *Powell Duffryn Timber Ltd. (E.A.T.)*.[5] It was submitted that under both tests, failure to hold an inquiry was an irregularity *not* fatal to the employer's case. See also *Earl* v. *Slater & Wheeler (Airlyne) Ltd.*[6]

Referring next to the English Employment Protection (Consolidation) Act 1978, section 57 whereof relates to the general provisions regarding fairness of dismissal and has provisions similar to our own. Subsection (3) thereof requires an Employment Tribunal to satisfy itself that the employer had in the circumstances (having regard to equity and the substantial merits of the case) acted reasonably in treating the circumstances as a sufficient reason for dismissing the employee.

India, we were told, has statutory provisions similar to those in our Act. The following passage from a Supreme Court decision in *Workmen of the Motipur Sugar Factory Private Limited* v. *The Motipur Sugar Factory Private Limited*[7] is relevant:

"Where an employer has failed to make an inquiry before dismissing or discharging a workman it is open to him to justify his action before the Tribunal by leading all relevant evidence before it. The entire matter would be open before the Tribunal. It will have jurisdiction not only to go into the limited questions open to a Tribunal where domestic inquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. The important effect of omission to hold an enquiry is merely that the Tribunal would not have to consider only whether there was a *prima facie* case but would decide for itself on the evidence adduced whether the charges have really been made out."

In India, it seems the failure is not fatal to the employer and he would be entitled to justify it before the Industrial Tribunal. If he had held the inquiry, he should have been told that they would not interfere unless they want the inquiry to be fair. If no inquiry had been held, the matter is at large.

We were also referred to a passage in the Kerala High Court decision in *Premier Tyres Ltd.* v. *Workmen*[8]:

"Where a workman is dismissed from service for misconduct without holding an inquiry and the Industrial Tribunal or the Labour Court finds that the dismissal was justified, the employer is not liable to pay the salary to the workman from the date of dismissal till the date of the decision of the Tribunal or Court."

The same principle seemed to apply under the Singapore Employment Act (Cap. 122 section 14). See *Lim Tow Peng & Anor.* v. *Singapore Bus Services Ltd.*[9]

Has the court below jurisdiction in its power of revision to substitute its own finding, or is its jurisdiction limited to quashing the award?

Our attention was also drawn to the House of Lords decision in *In re Amin*[10] which is support for the proposition that, in reviewing the decision of an administrative tribunal, the Kings Bench can only quash the decision without substituting its own.

This very principle was applied in the Federal Court decision in *Hotel Equatorial (M) Sdn. Bhd.* v. *National Union of Hotel, Bar & Restaurant Workers & Anor.*[11] At p. 371, Seah F.J., as he then was, in delivering the judgment of the court said:

"We do not think that a proper approach had been adopted by the learned judge of the High Court in dealing with the matter before him.

In the exercise of his inherent supervisory jurisdiction over inferior tribunals of limited jurisdiction the High Court must always remember that it is not sitting as a Court of Appeal to review findings of the inferior tribunals. The High Court, it must be observed, has no jurisdiction to consider the merits of the case; its only function is to consider whether the inferior tribunal has performed its duties according to law."

Mr. Lobo for the respondent was unable to find

authority to support the decision of the court below. The best he could do was to cite the Industrial Court decision in *General Ceramic Manufacturers Sdn. Bhd.* v. *Non-metallic Mineral Product Manufacturing Employees' Union*,[12] an award of the Industrial Court which of course is not a court of record. Perhaps, he cited it in the court below because the President of the Industrial Court who made this award is incidentally the same judge of the High Court whose decision is now the subject of appeal. The Industrial Court there held that though the dismissal was for just cause, the inquiry preceding it was conducted against the rules of natural justice, and therefore the dismissal did not take effect until the date of the hearing by the Industrial Court. It therefore ordered payment of compensation.

Mr. Lobo also sought to rely on a passage on p. 241 4th edition of de Smith's *Judicial Review of Administrative Action* which reads:

"Although breaches of natural justice used to be assignable as 'errors in fact,' a ground of challenge presupposing that the impugned order was merely voidable, there is a substantial body of recent judicial decisions to the effect that breach of the *audi alteram partem* rule goes to jurisdiction (or is akin to a jurisdictional defect) and renders an order or determination void."

Therefore, he argues that failure by the appellants to give the respondent a hearing before they dismissed him makes the dismissal void, and that the subsequent hearing and finding by the Industrial Court cannot validate it. The High Court should therefore, he submits, quash the award of the Industrial Court and order reinstatement.

The authorities cited in support, namely, *B.S.S. Kanda* v. *The Government of the Federation of Malaya*[13] and *University of Ceylon* v. *Fernando*,[14] are, however, appeals against failure by administrative tribunals to observe the *audi alteram partem* rule, and are therefore inapplicable in this appeal.

The short answer to Mr. Lobo's argument is that the right to a hearing, or as it is sometimes called the observance of procedural safeguards, is only applicable in respect of a hearing before an administrative tribunal and similar quasi-judicial tribunals performing judicial functions but do not apply to simple master-servant proceedings, such as the present one.

Also cited was the decision of this court, *Dunlop Industries Employees' Union* v. *Dunlop Malaysia Industries Berhad & Anor.*[15] which, with respect, is not applicable to the issues in the current appeal.

Mr. Lobo also sought to rely on *Sasa Musa Sugar Works (Pvt.) Ltd.* v. *Shobrati Khan*[16] and cited the following passage:

"Suspension of a workman charged with misconduct until the conclusion of the domestic inquiry is an interim measure which the employer is entitled to take. It cannot be said that such suspension amounts to punishment. However, if the suspension is not followed by a regular domestic inquiry, even though the workman's misconduct is proved before the Tribunal and the workman is dismissed, the dismissed workman has to be paid his wages for the period of suspension until the date of the award."

However, Mr. Lobo seems to have lost sight of the fact that we are dealing with a case of outright dismissal before an inquiry. The two later decisions of the Indian Supreme Court, namely, *Workmen of the Motipur Sugar Factory Private Ltd.* v. *The Motipur Sugar Factory Private Ltd.*[7] and *Workmen of the Firestone Tyre & Rubber Co. of India Private Ltd.* v. *The Management*[17] considered *Sasa Musa's* case in its limited application.

We have already considered the relevant passage in *Motipur's* case earlier, and do not propose to say anything more beyond saying that it is in accord with our view of the law in the instant appeal.

Finally, there is that decision of the Privy Council in *Calvin* v. *Carr and Others*[18] the facts of which are as follows:

"The appellant was part owner of a racehorse which had some form in New Zealand. In March 1976 the horse raced for the first time in Australia, in a handicap. The horse attracted support in the betting and was backed down to short odds but ran poorly and only came fourth. A steward's inquiry into its performance took place and as a result of the inquiry the jockey was found to be in breach of r 135a of the Rules of Racing of the Australian Jockey Club, by failing to give the horse full opportunity to win or to obtain the best possible place in the field, and the appellant was found guilty of being a party to the breach. The appellant was disqualified for one year and his membership of the Australian Jockey Club was forfeited. He appealed to the committee of the club pursuant to s. 32b of the Australian Jockey Club Act 1873 against his disqualification but his appeal was dismissed. The appellant brought an action against the chairman of the club, the members of the committee and the stewards seeking a declaration that his purported disqualification by the stewards and the dismissal of his appeal were void on the grounds, *inter alia*, that the stewards had failed to observe the rules of natural justice or fairness and their decision was therefore invalid, and that accordingly the committee had no jurisdiction to hear or determine the appeal from it. The trial judge held that, although in certain specified res-

pects the stewards had failed to observe the principles of natural justice, the proceedings before the committee constituted a hearing *de novo* and the defects in the stewards inquiry were thereby cured. The appellant appealed to the Privy Council, contending, *inter alia*, that the steward's decision was void and the committee had therefore no jurisdiction to entertain the appeal since it was a condition precedent of an appeal that there was a decision to appeal against, and that defects in the stewards' proceedings could not be cured merely by a fair hearing of his appeal by the committee."

It was held, *inter alia*, that there was no absolute rule that defects in natural justice at an original hearing could or could not be cured by appeal proceedings which had been correctly and fairly conducted. However, where a person had joined an organisation or body and was deemed, on the rules of that organisation and the contractual context in which he joined, to have agreed to accept what in the end was a fair decision, notwithstanding some initial defect, the task of the courts was to decide, in the light of the agreements made and having regard to the course of the proceedings, whether at the end of those proceedings there had been a fair result reached by fair methods. On the facts, those who took part in racing were deemed to have accepted the Rules of Racing and to be bound by the decisions of bodies set up under the rules, provided they received fair treatment and a consideration of their case on its merits. The appellant's case had received, overall, full and fair consideration and there was therefore no basis on which the court ought to interfere.

The same could be said of the inquiry held by the Industrial Court in this instance.

Accordingly, we hold that the workman was lawfully dismissed as was held by the Industrial Court. However, neither that court nor the High Court was correct in amending the date of dismissal and in awarding compensation as a consequence of such amended date, both matters outside their jurisdiction in an inquiry under section 20(3) of the Industrial Relations Act.

We would therefore allow the appeal, set aside the finding of the High Court and quash the award by the Industrial Court with regard to effective date of dismissal and backwages and orders consequential thereon. Costs to the appellant here and below. Deposit to be refunded.

Appeal allowed.

Solicitors: *Shook Lin & Bok; Lobo & Associates.*

TOH THEAM HOCK v. KEMAJUAN PERWIRA MANAGEMENT CORPORATION SDN. BHD.

[S.C. (Lee Hun Hoe C.J. (Borneo), Hashim Yeop A. Sani & Wan Hamzah S.C.JJ.) February 9 & April 27, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 192 of 1986]

Legal Profession – Solicitor – Solicitor receiving deposit in accordance with contract of sale – Whether holding as agent for vendor or as stakeholder – Whether vendor entitled to interest earned on deposits – Housing Developers (Control and Licensing) Rules 1970, Schedule C – Solicitors Accounts Rules 1967, r.2 – Legal Profession Act 1976, s.86(2).

The respondents were developers and vendors of houses built on their land and the appellant was the solicitor appointed by them. In the sale and purchase agreement between the respondents and various purchasers of the houses it was agreed that a sum equivalent to 5% of the purchase price be paid "to the vendor's solicitors or some other person or company authorised by the Controller as stakeholder" for payment to the vendor on production of the certificate of fitness for occupation of the building. The appellant received the deposits and kept them in his clients' account receiving interest therefor. The respondents brought an originating summons in the High Court asking for an order that the appellant deliver to the respondents a list of all monies which have accrued as interest on the 5% of the purchase money which had been retained by him in respect of the sale of certain houses. In respect of the houses for which certificates of fitness had been issued the total amount of deposits was paid to the respondents but not the interest earned on the deposits. The learned judge granted the application of the respondents holding that the appellant acted as the agent of the respondents and therefore as agent he was liable to account for whatever money he received for the respondents including interest. The appellant appealed.

Held, allowing the appeal: (1) the respondents had entered into sale and purchase agreements wherein they agreed to abide by the term of the agreements with regard to the 5% of the purchase price to be paid to their solicitors as stakeholder which was to be paid only on the production of the certificate of fitness for occupation of the premises. The respondents were not entitled to the deposit until the Certificate of Fitness was issued;

(2) the appellant cannot be held accountable to the respondents in respect of the interest on the deposits in each case up to the date of the issue of the Certificate of Fitness.

Cases referred to:

(1) *Sorrell* v. *Finch* [1977] A.C. 728.
(2) *Maloney* v. *Hardy* (1970) 216 E.G. 1582.
(3) *Burt* v. *Claude Cousins & Co. Ltd.* [1971] 2 Q.B. 426.
(4) *Potters* v. *Loppert* [1973] 1 All E.R. 658.

SUPREME COURT.

Lim Kean Chye (*M. Singaram* with him) for the appellants.